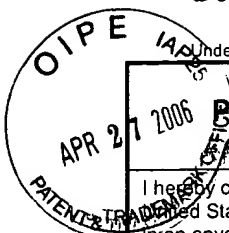


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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 1400.4100231	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>04-19-2006</u> Signature <u>Ross D. Snyder</u> Typed or printed name <u>Ross D. Snyder, Reg. No. 37,730</u>		Application Number <u>09/549,328</u>	Filed <u>04-13-2000</u>
		First Named Inventor <u>Shawn P. McAllister et al.</u>	
		Art Unit <u>2142</u>	Examiner <u>Blair, Douglas B.</u>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)
- ☒ attorney or agent of record. 37,730  
Registration number
- ☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Ross D. Snyder  
Signature  
Ross D. Snyder, Reg. No. 37,730  
Typed or printed name  
(512) 347-9223  
Telephone number  
04-19-2006  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Shawn P. McAllister, et al.

Title: METHOD AND APPARATUS FOR CONGESTION AVOIDANCE IN SOURCE  
ROUTED SIGNALING PROTOCOL COMMUNICATION NETWORKS

App. No.: 09/549,328

Filed: 04-13-2000

Examiner: Blair, Douglas B

Group Art Unit: 2142

Atty. Dkt. No. 1400.4100231

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Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

Claims 1-62 are pending in the present application. The Examiner has finally rejected claims 1-62. Applicant respectfully requests reconsideration of pending claims 1-62. Applicant files herewith a notice of appeal. Pursuant to the "New Pre-Appeal Brief Conference Pilot Program," 1296 Off. Gaz. Pat. Office 67 (July 12, 2005) and the "Extension of the Pilot Pre-Appeal Brief Conference Program" dated 1/10/2006, Applicant submits a pre-appeal brief request for review. The review is requested for the reasons set forth below:

The Examiner has rejected claims 1-62 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,201,810, issued to Masuda et al. Applicant respectfully disagrees and presented specific arguments with respect to the rejected claims in Applicant's reply to the non-final office action dated 03/23/2005. Applicant submits there exist clear errors in the Examiner's rejections and/or the Examiner's omissions of one or more essential elements needed for a prima facie rejection. For example, Applicant submits the Examiner merely identifies lengthy portions of the specification of the cited reference as allegedly anticipating features of the claimed invention. In at least some cases, the Examiner cites the same lengthy portion of the specification of the cited reference as allegedly anticipating multiple features of a single claim, yet provides no elaboration as to what alleged specific teachings of that lengthy portion allegedly anticipate the different features of the claim.

Moreover, while Applicant presented specific arguments as to why Applicant finds no teaching in the cited portions of the cited reference as to specific features of recited in the claims, Applicant submits the Examiner's "Response to Arguments" provides evidence that the Examiner has failed to consider the pending claims as required by the Manual of Patent Examining Procedure (MPEP) and prevailing case law. For

anticipation under 35 U.S.C. § 102, a reference must teach every aspect of the claimed invention either explicitly or implicitly. Any feature not directly taught must be inherently present [emphasis added]. See MPEP 706.02 – distinction between 35 U.S.C. § 102 and § 103. In the Examiner's "Response to Arguments," the Examiner states, "The claims appear to be directed toward the broad concept of detecting congestion and rerouting traffic accordingly; a concept which Masuda teaches." In the Examiner's "broad concept" analysis, Applicant sees no evidence that the Examiner has considered "...every aspect of the claimed invention...." Thus, Applicant submits there exist clear errors in the Examiner's rejections and/or the Examiner's omissions of one or more essential elements needed for a prima facie rejection.

As examples of features found in the claims for which Applicant submits the Examiner has not cited teachings in the cited reference, Applicant reiterates the following as set forth in Applicant's reply to the non-final office action dated 03/23/2005:

Regarding claim 20, for example, Applicant can find no teaching in the cited portion of Masuda et al. of "control plane congestion," "corresponding to the control plane congestion," or "wherein the at least one additional network element utilizes the congestion notification for routing control traffic around the network element at which the control plane congestion has been detected."

Regarding claim 21, for example, Applicant can find no teaching in the cited portion of Masuda et al. of "control plane congestion" or providing "the congestion notification via a routing plane." Regarding claim 22, for example, Applicant can find no teaching in the cited portion of Masuda et al. of "control plane congestion" or providing "the congestion notification via a routing plane." Regarding claim 23, for example, Applicant can find no teaching in the cited portion of Masuda et al. of "control plane congestion" or providing "the congestion notification via a signaling plane."

Regarding claim 24, for example, Applicant can find no teaching in the cited portion of Masuda et al. of providing "the congestion notification in response to a received connection setup message generated by a source node in the network." Applicant also notes the Examiner has not identified any specific feature of Masuda et al. as allegedly teaching "a received connection setup message generated by a source node in the network."

Regarding claim 25, for example, Applicant can find no teaching in the cited portion of Masuda et al. of providing "a connection setup message," much less a "congestion notification...provided to each network element along a path traversed by the connection setup message." Applicant also notes the Examiner has not identified any specific feature of Masuda et al. as allegedly teaching a "connection setup message."

Regarding claim 26, for example, Applicant can find no mention of "congestion" in the cited portion of Masuda et al., much less "at least one congestion parameter from the set of congestion parameters that includes: a congestion type that distinguishes between node congestion and link congestion, a congestion location, and a

congestion level." Applicant also notes the Examiner has not identified any specific feature of Masuda et al. as allegedly teaching "at least one congestion parameter."

Regarding claim 28, for example, Applicant can find no teaching in the cited portion of Masuda et al. of "a source routed control network." Applicant also notes the Examiner has not identified any specific feature of Masuda et al. as allegedly teaching "a source routed control network."

Regarding claims 1-10, the Examiner states, "they feature the same limitations as claims 20-29 and are rejected for the same reasons as claims 20-29." Applicant respectfully disagrees. For example, Applicant notes claim 3 includes the feature "wherein the neighboring network elements propagate the congestion notification to subsequent neighboring network elements," which is not included in claims 20-29. Moreover, Applicant notes the Examiner has not alleged the Masuda et al. to teach such feature. Also, Applicant has presented arguments for the allowability of claims 20-29. To whatever extent similarity may exist between one or more of claims 1-10 and one or more of claims 20-29 such that those arguments would also apply to one or more of claims 1-10, Applicant asserts those arguments. Thus, Applicant submits claims 1-10 are in condition for allowance.

Regarding claim 30, for example, Applicant can find no teaching in the cited portion of Masuda et al. of "control plane congestion" or providing "the congestion notification via a routing plane."

Regarding claim 31, for example, Applicant notes Masuda et al. state, in col. 8, lines 6 and 7, "...the congestion status is checked by referring to the CI flag of the tree table 81," which Applicant submits fails to disclose "congestion notification includes a congestion level and wherein utilization of the congestion notification further comprises reducing control traffic to the network element at which the control plane congestion has been detected, wherein an amount of reduction in control traffic to the network element is based on the congestion level." As another example, Applicant notes Masuda et al. state, in col. 8, lines 8-13, "...when the congestion is judged to occur..., a CI (congestion indication) flag at the place concerned on the tree table 81 is renewed from "Nor(Normal) (Congestion Release Status)" to "ALM (Alarm) (Congestion Occurring Status)," which Applicant submits also fails to disclose "congestion notification includes a congestion level and wherein utilization of the congestion notification further comprises reducing control traffic to the network element at which the control plane congestion has been detected, wherein an amount of reduction in control traffic to the network element is based on the congestion level." Thus, Applicant submits claim 31 is in condition for allowance.

Regarding claim 32, Applicant can find teaching as alleged by the Examiner in the cited portion of the cited reference. Regarding claim 33, not only can Applicant find no such teaching in the cited portion of the cited reference of "sending a first connection setup message along the first routing path," as noted above with respect to claim 32, but also, as another example, Applicant can find no teaching in the cited portion of the cited

reference of "sending a second connection setup message along the second routing path." or "an indication of control plane congestion."

Regarding claim 34, Applicant can find nothing in the cited portion of the cited reference that would teach "...cause the processing module to add congestion information included in the control plane congestion to the network parameters stored in the table" for H/W table 82, and Applicant can find no teaching as to an "indication of control plane congestion" in the cited portion of the cited reference. Regarding claim 35, Applicant can find no mention of a "table" in the cited portion of the cited reference, nor any mention of removing anything from a "table," much less any teaching as to "...cause the processing module to remove the congestion information from the table after a predetermined time period." Regarding claim 36, Applicant can find no teaching as to "...cause the processing module to remove the congestion information from the table after a predetermined time period." Accordingly, Applicant can find no teaching as to "...wherein the predetermined time period is based on the level of congestion" or "...wherein the congestion information includes a level of congestion...."

Regarding claim 37, Applicant can find no teaching in the cited portion of the cited reference of "...relaying the indication of control plane congestion to at least one additional node in the communication network." or "...indication of control plane congestion..." in the cited portion of the cited reference. Regarding claim 38, Applicant can find no teaching of an "...indication of control plane congestion..." in the cited portion of the cited reference.

Regarding claim 39, Applicant can find no teaching in the cited portion of the cited reference of "...wherein the indication of control plane congestion is received by the processing module via a routing plane." or "...indication of control plane congestion...." or "...a routing plane...." Regarding claim 40, Applicant can find no teaching in the cited portion of the cited reference of "...wherein the indication of control plane congestion is received by the processing module via a signaling plane." or "...indication of control plane congestion...." or "...a signaling plane...." Moreover, Applicant can find no teaching in the cited portion of the cited reference as to either "...via a routing plane" or "...via a signaling plane," and Applicant submits that, to whatever extent the Examiner relies on col. 7, line 55, through col. 8, line 15, to allegedly teach "...via a routing plane," the Examiner further undercuts the Examiner's reliance on col. 7, line 55, through col. 8, line 15, as allegedly teaching "...via a signaling plane," and, to whatever extent the Examiner relies on col. 7, line 55, through col. 8, line 15, to allegedly teach "...via a signaling plane," the Examiner further undercuts the Examiner's reliance on col. 7, line 55, through col. 8, line 15, as allegedly teaching "...via a routing plane." Thus, Applicant submits claims 39 and 40 are in condition for allowance.

Regarding claims 11-19, to whatever extent the Examiner asserts claims 11-19 to have the same limitations as claims 32-40 and rejects them for the same reasons, Applicant notes Applicant's arguments

presented above for the allowability of claims 32-40. Thus, Applicant submits claims 11-19 are also in condition for allowance.

Regarding claims 41 and 42, the Examiner states, "...they feature the same limitations as claims 20 and 30-31 and are rejected for the same reasons as claims 20 and 30-31. Applicant respectfully disagrees. For example, Applicant notes that claim 41 includes "such that a scaled back amount of control traffic is sent to the network element at which the control plane congestion has been detected," which is not present in any of claims 20, 30, or 31. Moreover, Applicant notes the Examiner has not alleged any teaching of such feature in the cited reference. Applicant submits the cited portion of the cited reference (col. 8, lines 8-15), teaches away from such feature. Therefore, Applicant submits claim 41 is in condition for allowance.

Regarding claim 42, to whatever extent the Examiner asserts claim 42 to have the same limitations as claims 20, 30, and 31 and rejects them for the same reasons, Applicant notes Applicant's arguments presented above for the allowability of claims 20, 30, and 31. Moreover, Applicant notes that claims 20, 30, and 31 have different limitations, and, therefore, claim 42 cannot have the same limitations as all of claims 20, 30, and 31. Thus, Applicant submits claim 42 is also in condition for allowance.

Regarding claim 43, the Examiner states, "it is considered a broader version of claims 32-33 and is rejected for the same reasons as claims 32-33." To whatever extent the Examiner asserts claim 43 to have the same limitations as claims 32 and 33 and rejects it for the same reasons, Applicant notes Applicant's arguments presented above for the allowability of claims 32 and 33. Thus, Applicant submits claim 43 is also in condition for allowance.

Regarding claims 44-62, to whatever extent the Examiner asserts claims 44-62 to be rejected for the same reasons 20-40, Applicant notes Applicant's arguments presented above for the allowability of claims 20-40. Thus, Applicant submits claims 44-62 are also in condition for allowance.

Respectfully submitted,

04/19/2006 Date



Ross D. Snyder, Reg. No. 37,730  
Attorney for Applicant(s)  
Ross D. Snyder & Associates, Inc.  
PO Box 164075  
Austin, Texas 78716-4075  
(512) 347-9223 (phone)  
(512) 347-9224 (fax)